IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.632 of 2006

Decided on: August 1, 2006

M/s Bhawani Industries Ltd. .....Petitioner.

VERSUS

State of H.P. & Ors. .....Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Petitioner: **Mr. Rajiv Sharma, Senior Advocate, with Mr. Surinder Sharma, Advocate.**

For the Respondents : **Mr. M.S. Chandel, Advocate General with Mr. J.K.Verma, Deputy Advocate General.**

V.K. Gupta, Chief Justice (Oral)

Mr. Chandel does not want to file any reply.

2. With the consent of the learned counsel for the parties, this petition is being taken up today itself for final disposal at the admission stage without formally admitting it to hearing.

3. Petitioner's grievance is that that despite being L-1 it has not been called for negotiations. This matter came up for consideration yesterday for the first time and we requested the learned Advocate General to report his instructions to us today. Learned Advocate General has produced before us, for our perusal,

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

the minutes of the second meeting of the Screening Committee held on 25th July, 2006. Item No.1 of these minutes does suggest that the petitioner indeed is L-1 but the Committee decided not to call it for negotiations ostensively on the ground that in the opinion of the Committee the performance of the petitioner may not be upto the mark and that the petitioner may not be supplying the product of requisite quality and specifications. In arriving at this opinion, the Committee was guided by two facts; firstly that the Government of Haryana has debarred the petitioner from doing any business with that government for a period of three years and secondly that a complaint was received from S.E., IPH Circle Rohru that against the supply order dated 2nd February, 2006, the petitioner had supplied defective pipes.

4. In so far as the first ground is concerned, Mr. Sharma has taken us through various documents (Annexures filed with the Writ Petition) which culminated in the Government of Haryana issuing a communication on 3rd April, 2006, which indeed says that that government has debarred the petitioner from doing business with Haryana Government for three years. According to Mr. Sharma, this debarring decision was taken not because of any defect in quality or any misconduct committed by the petitioner but because of a dispute regarding the rate structure owing to lapse of time. Because the petitioner had refused to extend the period of supply on the rates as had been originally agreed on 1st November, 2005 the Haryana Government perhaps took the aforesaid decision.

5. In so far as the second ground is concerned, the correspondence shown to us, especially letter No.IPH-RC-GI Pipes/ 06/207-II dated 21st April, 2006 from SE, IPH Circle, Rohru addressed to Engineer-in-Chief, Irrigation & Public Health Department, Shimla, suggests that five pipes had broken into pieces while these were being shifted for utilization on different works. This had raised doubts about the quality of the pipes.

6. Looking from whatever point of view one thing is absolutely clear. Before refusing to grant it equal opportunity, alongwith other tenderers, in the sense before calling it for negotiations despite it being L-1 tenderer, the respondents did not bring the aforesaid facts to the notice of the petitioner with a view to enabling it to explain its position. This apparently has violated the right vested in the petitioner for equal consideration under Article 14 of the Constitution of India, necessitating an intervention by this Court.

7. The respondents are directed to call the petitioner for negotiations because the petitioner is L-1 tenderer. However, at the same time the respondents are also permitted to take a conscious decision, in public interest, based on the material available to them, to find out whether on technical parameters the petitioner is capable of delivering quality products, also conforming to prescribed specifications. If based upon this conscious decision the respondents feel and find out that the petitioner cannot be relied upon, they are at liberty not to award the contract to the petitioner despite the petitioner

being L-1 tenderer or despite the fact that the petitioner may offer rates lower than other tenderers. However, before such a final decision is taken the petitioner shall be afforded an opportunity of being heard.

8. The petition is disposed of along with all the pending applications.

(V.K. Gupta)
Chief Justice.

(Surjit Singh)
Judge.

August 1, 2006(soni)